

## SENATE BILL No. 319

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-1.5.

**Synopsis:** Serial meeting violation of open door law. Provides that a series of gatherings by the governing body of a state or local government agency violates the open door law if: (1) less than a quorum of members of the governing body attend each gathering; (2) the total number of members attending all gatherings constitutes at least a quorum of the governing body; and (3) the gatherings are conducted for the purpose of conducting official business.

**Effective:** July 1, 2004.

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January 12, 2004, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 319

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2004]: **Sec. 3.1. (a) A governing body violates**  
4 **this chapter if the governing body conducts a series of at least two**  
5 **(2) gatherings of members of the governing body that fulfill the**  
6 **following requirements:**

7           (1) Each gathering is attended by less than a quorum of the  
8 members of the governing body.

9           (2) The sum of the members of the governing body who attend  
10 the gatherings constitutes at least a quorum of the governing  
11 body.

12           (3) A member attends a gathering in person, by intermediary,  
13 by telephone, or other electronic means.

14           (4) The gatherings are held for the purpose of taking official  
15 action on public business.

16       **(b) A gathering under subsection (a) does not include:**

17           (1) a social or chance gathering not intended to avoid this

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chapter;

(2) an on-site inspection of any project or program;

(3) traveling to and attending meetings of organizations devoted to betterment of government; or

(4) a caucus.

(c) A violation described in subsection (a) is subject to section 7 of this chapter.

SECTION 2. IC 5-14-1.5-7, AS AMENDED BY P.L.191-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) An action may be filed by any person in any court of competent jurisdiction to:

(1) obtain a declaratory judgment;

(2) enjoin continuing, threatened, or future violations of this chapter; or

(3) declare void any policy, decision, or final action:

(A) taken at an executive session in violation of section 3(a) of this chapter;

(B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;

(C) that is based in whole or in part upon official action taken at any:

(i) executive session in violation of section 3(a) of this chapter; ~~or at any~~

(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter;

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

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1 (A) the date of the act or failure to act complained of; or  
 2 (B) the date that the plaintiff knew or should have known that  
 3 the act or failure to act complained of had occurred;  
 4 whichever is later. If the challenged policy, decision, or final action is  
 5 recorded in the memoranda or minutes of a governing body, a plaintiff  
 6 is considered to have known that the act or failure to act complained of  
 7 had occurred not later than the date that the memoranda or minutes are  
 8 first available for public inspection.

9 (c) If a court finds that a governing body of a public agency has  
 10 violated this chapter, it may not find that the violation was cured by the  
 11 governing body by only having taken final action at a meeting that  
 12 complies with this chapter.

13 (d) In determining whether to declare any policy, decision, or final  
 14 action void, a court shall consider the following factors among other  
 15 relevant factors:

16 (1) The extent to which the violation:

17 (A) affected the substance of the policy, decision, or final  
 18 action;

19 (B) denied or impaired access to any meetings that the public  
 20 had a right to observe and record; and

21 (C) prevented or impaired public knowledge or understanding  
 22 of the public's business.

23 (2) Whether voiding of the policy, decision, or final action is a  
 24 necessary prerequisite to a substantial reconsideration of the  
 25 subject matter.

26 (3) Whether the public interest will be served by voiding the  
 27 policy, decision, or final action by determining which of the  
 28 following factors outweighs the other:

29 (A) The remedial benefits gained by effectuating the public  
 30 policy of the state declared in section 1 of this chapter.

31 (B) The prejudice likely to accrue to the public if the policy,  
 32 decision, or final action is voided, including the extent to  
 33 which persons have relied upon the validity of the challenged  
 34 action and the effect declaring the challenged action void  
 35 would have on them.

36 (4) Whether the defendant acted in compliance with an informal  
 37 inquiry response or advisory opinion issued by the public access  
 38 counselor concerning the violation.

39 (e) If a court declares a policy, decision, or final action of a  
 40 governing body of a public agency void, the court may enjoin the  
 41 governing body from subsequently acting upon the subject matter of  
 42 the voided act until it has been given substantial reconsideration at a

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1 meeting or meetings that comply with this chapter.

2 (f) In any action filed under this section, a court shall award  
3 reasonable attorney's fees, court costs, and other reasonable expenses  
4 of litigation to the prevailing party if:

5 (1) the plaintiff prevails; or

6 (2) the defendant prevails and the court finds that the action is  
7 frivolous and vexatious.

8 The plaintiff is not eligible for the awarding of attorney's fees, court  
9 costs, and other reasonable expenses if the plaintiff filed the action  
10 without first seeking and receiving an informal inquiry response or  
11 advisory opinion from the public access counselor, unless the plaintiff  
12 can show the filing of the action was necessary to prevent a violation  
13 of this chapter.

14 (g) A court shall expedite the hearing of an action filed under this  
15 section.

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